

ARTICLE 46-04

HUMAN RIGHTS

Chapter	
46-04-01	Human Rights Practice and Procedure

CHAPTER 46-04-01 HUMAN RIGHTS PRACTICE AND PROCEDURE

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46-04-01-01. Definitions. When used in this chapter or in the North Dakota Human Rights Act:

1. "Act" means the North Dakota Human Rights Act, North Dakota Century Code chapter 14-02.4.
2. "Alternative dispute resolution" means the confidential and voluntary mediation process facilitated by the department for resolving allegations of employment discrimination prior to investigation being conducted by the department.
3. "Charge of discrimination" means written allegations of a discriminatory practice in regard to employment filed with the department in compliance with these rules, including an amended charge of discrimination.
4. "Charging party" means a person, including the department, who files a charge of discrimination in regard to discriminatory employment practices under North Dakota Century Code chapter 14-02.4.
5. "Complainant" means a person, including the department, who files a complaint under North Dakota Century Code section 14-02.4-19, in all areas covered by the Act, except employment.

6. "Complaint" means written allegations of a discriminatory practice filed with the department in compliance with these rules, in all areas covered by the Act, except employment, including an amended complaint.
7. "Conciliation" means the negotiations facilitated by the department between a charging party and the respondent to resolve the issues involving employment, after there has been a determination of probable cause.
8. "Conciliation agreement" means a written agreement setting forth the terms that resolve the issues under conciliation.
9. "EEOC" means the United States equal employment opportunity commission.
10. "Informal negotiations" means negotiations facilitated by the department between a complainant or charging party and the respondent to resolve the issues raised in the complaint or charge of discrimination, which may include mediation or alternative dispute resolution.
11. "Negotiated settlement agreement" means a written agreement setting forth the terms that resolve the issues under informal negotiation.
12. "Respondent" means a person accused of a discriminatory practice.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4

46-04-01-02. Intake and reviewability and dismissal.

1. An aggrieved person may utilize an intake questionnaire provided by the department to gain assistance from the department by contacting the department in person, by telephone, or in writing regarding alleged discriminatory practices.
2. The department shall promptly make a preliminary assessment to determine whether the information provided involves a potential violation of the Act and whether the department has jurisdiction over the matter.
3. The department shall administratively close or dismiss an intake questionnaire if during the preliminary assessment of the intake questionnaire it is determined that the alleged violation is:
 - a. Not within the jurisdiction of the department; or
 - b. Otherwise excluded from department review by state or federal law.

4. If it is determined that the department does not have jurisdiction, the department shall inform the aggrieved person of the reason the department lacks jurisdiction.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4

46-04-01-03. Complaint or charge of discrimination.

1. A complaint or charge of discrimination may be filed by any aggrieved person or the person's duly authorized representative. A complaint or charge of discrimination filed by a representative shall state that the representative is authorized to file the complaint. The department may file a complaint or charge of discrimination.
2. Department staff shall be available during regular business hours to provide reasonable assistance to the aggrieved person in the drafting of the complaint or charge of discrimination.
3. Every complaint or charge of discrimination must be in writing, signed and verified upon a form designated by the department.
4. A complaint or charge of discrimination must contain a concise statement setting forth, to the extent reasonably possible, the following information:
 - a. The name, address, and telephone number of the complainant or charging party;
 - b. The name, address, and telephone number of the respondents;
 - c. The specific basis for the complainant's or charging party's belief that an unlawful practice has occurred, with relevant dates, places, and names of any individual participating in the alleged unlawful conduct or practice;
 - d. The specific basis for the complainant's or charging party's belief that the alleged conduct is subject to the Act, identifying the statute to be reviewed;
 - e. The specific harm the complainant or charging party believes he or she has suffered as a result of the alleged unlawful conduct; and
 - f. Any other information required by the department.
5. A complaint or charge of discrimination may be amended at any time by the complainant, the charging party, or the department in order to:

- a. Cure technical defects or omissions;
 - b. Allege additional facts if they relate to the facts in the original complaint or charge of discrimination;
 - c. Add, remove, or change a party; or
 - d. Accomplish the purposes of the Act.
6. A complaint of discrimination may be withdrawn by a complainant. A charge of discrimination may be withdrawn by a charging party but only with the consent of the department. A complainant or charging party may submit a signed request for withdrawal with the department at any time. The department shall consider whether the withdrawal of the charge would defeat the purposes of the Act, and based upon that assessment, may permit or refuse to permit the withdrawal of a charge of discrimination by a charging party.
 7. A charge of discrimination filed with the department that alleges a violation of law administered by the EEOC under the then existing work-sharing agreement shall be forwarded to the EEOC by the department.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4-19, 14-02.4-23

46-04-01-04. Computation of time.

1. Time limitations for filing an action are as set forth in North Dakota Century Code section 14-02.4-19. In actions involving the department, a complaint, a charge of discrimination, and answer, or an election is deemed to be filed on the date it is received by the department, whether by mail, personal delivery, or facsimile. Documents produced by the department are deemed filed when signed by the commissioner or by the commissioner's designee.
2. Each document received by the department shall be date-stamped to reflect the date it was received.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4-19, 14-02.4-23

46-04-01-05. Notice requirements.

1. **Notice to complainant or charging party.** Within ten days of the filing of the complaint or charge of discrimination, the department shall

provide notice to the complainant or charging party and such notice must include:

- a. The date the complaint or charge of discrimination was filed with the department;
 - b. A copy of the complaint or charge of discrimination; and
 - c. A statement describing the department's duties and the complainant's or charging party's obligations under the Act.
2. **Notice to respondents.** Within ten days of the filing of a complaint or charge of discrimination, the department shall provide notice to the respondents, and such notice must include:
- a. The date the complaint or charge of discrimination was filed with the department;
 - b. A copy of the complaint or charge of discrimination;
 - c. A statement of the time limits applicable to the investigative process;
 - d. A statement describing the respondent's options for responding to the complaint or charge of discrimination; and
 - e. A statement, if not readily discernible from the complaint or charge of discrimination, identifying the alleged discriminatory practice on which the complaint or charge of discrimination is based.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4-19, 14-02.4-23

46-04-01-06. Respondent's response.

1. The respondents may file a signed written response within twenty days of the date a respondent receives notice of the complaint or charge of discrimination.
2. If the complaint or charge of discrimination is amended, the respondents may file an amended response in the same manner as the original.
3. Department staff shall be available during regular business hours to provide reasonable assistance to respondents in drafting and completing responses.

4. The department may grant an extension of time to file a response upon request by a respondent if such a request is reasonable and not for the purpose of delay.
5. Failure by a respondent to file a response may result in the department concluding its investigation based upon information provided by the complainant or charging party and such other information as is reasonably available to the department.
6. The department may send a followup request for information, to gather additional documentary evidence, and when relevant, to gather comparative information as to how other persons similarly situated were treated by the respondents.
7. Failure by a respondent to provide requested information may result in the department issuing a subpoena or subpoena duces tecum requiring the production of the requested information.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4-19, 14-02.4-23

46-04-01-07. Informal negotiations.

1. In all cases involving allegations of discriminatory practices, the department, during the period beginning with the filing of a complaint or charge of discrimination and ending with the dismissal or the issuance of a determination of probable cause by the department, to the extent feasible, shall engage in informal negotiations in an attempt to resolve the complaint or charge of discrimination.
2. The department does not represent any party in the informal negotiation process and shall act as a neutral third party in attempting to reach an agreement that is satisfactory to all parties.
3. A negotiated settlement agreement between the complainant or charging party and the respondents shall be reduced to writing, is subject to departmental approval, and is enforceable in the same manner as a final determination of the department. A copy of the signed negotiated settlement agreement shall be provided to the complainant or charging party and the respondents.
4. A negotiated settlement agreement may include terms for monitoring compliance with the agreement. The department may require any party to submit compliance reports as the department deems necessary to show the manner of compliance with the terms of the negotiated settlement agreement.

5. When the department is unable to obtain voluntary compliance and it is determined that further efforts would be futile or nonproductive, the parties will be notified in writing that negotiations to resolve the dispute have failed. If any party fails to respond within fifteen days after the receipt of a proposed negotiated settlement, the department may conclude that negotiations have failed as a result of the inactivity.
6. The department shall monitor all negotiated settlement agreements which have been approved by the department and which require specific performance by one or more of the parties. If it appears that a party is not in compliance with the terms of the agreement, the department shall notify the party in an attempt to obtain voluntary compliance or conduct further investigation into the alleged breach, or do both.
7. If there is probable cause to believe that a party has breached the negotiated settlement agreement, the department may commence proceedings to enforce the agreement unless to do so would not warrant the use of department resources.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4-22, 14-02.4-23

46-04-01-08. Investigation and disposition.

1. Pursuant to North Dakota Century Code section 14-02.4-22, the department shall investigate allegations of discriminatory practices.
2. An investigation may include, subject to reasonable notice to the parties, onsite visits, interviews, fact-finding conferences, and the obtaining of records and other information as is reasonably necessary to investigate the complaint or charge of discrimination.
3. A party's unjustified failure to cooperate with the department's reasonable investigative request may result in the department concluding its investigation based on such other information as is available to the department. A party's unjustified failure to cooperate with the reasonable investigative request may also result in the issuance of a subpoena or subpoena duces tecum.
4. Unless the matter is otherwise resolved, upon completing its investigation the department shall determine from the evidence obtained whether probable cause exists to believe that a discriminatory practice has occurred. The determination will include a brief statement of the reasons for the department's conclusions and will be mailed to all parties.

5. If the department determines that probable cause exists to believe that a discriminatory practice has occurred or is occurring and is unable to resolve the complaint through informal negotiations or conciliation, the aggrieved person will be offered an administrative hearing at no cost. If the aggrieved person requests an administrative hearing, the department participates in the hearing in an attempt to obtain appropriate relief on behalf of the aggrieved person. The attorney general represents the department in such proceedings. An aggrieved person has the right to intervene; however, if an aggrieved person wishes to be represented by an attorney at the administrative hearing, it will be at the person's own expense.
6. The aggrieved person will be notified in writing of the person's option to request an administrative hearing. The aggrieved person must contact the department within twenty days from receipt of the determination to elect an administrative hearing. Reasonable extensions will be considered if the request is made within the twenty-day period.
7. If the aggrieved person does not elect an administrative hearing offered by the department, the aggrieved person may bring a civil action in state district court. The aggrieved person is responsible for the person's own representation in a state district court action.
8. On all complaints or charges of discrimination filed under the Act, it is the department's goal to determine whether or not probable cause exists within one hundred eighty days unless it is impracticable to do so. If the department is unable to make its determination within one hundred eighty days, it shall notify the parties of the reasons for delay.
9. The department may dismiss or administratively close a complaint or charge of discrimination prior to the completion of its investigation if:
 - a. The matter is resolved through informal negotiations;
 - b. The complaint or charge of discrimination is withdrawn by the complainant or charging party;
 - c. The complainant or charging party fails to cooperate with the department during the investigation, subject to the department providing notification by certified mail, of the need to cooperate or provide required information, or both, within thirty days of the notice;
 - d. The department is unable to locate the complainant or charging party; or
 - e. The complaint or charge of discrimination is deferred to a federal agency for investigation under the terms of a work-sharing agreement between the department and the federal agency.

10. The department shall notify the complainant or charging party and respondent of any dismissal or administrative closure of a complaint or charge of discrimination.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4-23

46-04-01-09. Conciliation in employment discrimination.

1. In cases involving allegations of discriminatory employment practices, the department, during the period beginning with the issuance of a probable cause determination, to the extent feasible, shall engage in conciliation with the parties in an attempt to resolve the charge of discrimination.
2. The department does not represent any party in the conciliation process and shall act as a neutral third party during the conciliation process in attempting to reach an agreement that is satisfactory to all parties.
3. A conciliation agreement between the charging party and the respondents shall be reduced to writing, is subject to departmental approval, and is enforceable in the same manner as a final determination of the department. A copy of the signed conciliation agreement shall be provided to the charging party and the respondents.
4. A conciliation agreement may include terms for monitoring compliance with the agreement. The department may require any party to submit compliance reports as the department deems necessary to show the manner of compliance with the terms of the conciliation agreement.
5. When the department is unable to obtain voluntary compliance and it is determined that further efforts would be futile or nonproductive, the charging party and the respondents shall be notified in writing that conciliation efforts have failed. If any party does not respond within fifteen days after the receipt of a proposed conciliation remedy, the department may conclude that conciliation has failed as a result of the inactivity.
6. The department shall monitor all conciliation agreements which have been approved by the department and which require specific performance by one or more of the parties. If it appears that a party is not in compliance with the terms of the agreement, the department shall notify the party in an attempt to obtain voluntary compliance or conduct further investigation into the alleged breach, or do both.
7. If there is probable cause to believe that a party has breached the conciliation agreement, the department may commence proceedings

to enforce the agreement, unless to do so would not warrant the use of department resources.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4-22, 14-02.4-23

46-04-01-10. Reliance on outside sources. The rules set forth contain the procedures established by the department for carrying out its responsibilities in the administration and enforcement of the Act. In the absence of a specific rule, in cases when a charge of discrimination is dual-filed with the department and the EEOC, the department will rely on federal regulations and the compliance manual established by the EEOC for guidance.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4-23

46-04-01-11. Parties' right to representation. The complainant, any aggrieved person, or the respondent may be accompanied, advised, and represented throughout the investigation or any administrative proceeding by any chosen representative, including private counsel, at the party's own expense. If the party chooses to be represented, the party must notify the department in writing of such representation and of the nature and scope of the representation to facilitate effective communication.

History: Effective October 1, 2008.

General Authority: NDCC 14-02.4-22

Law Implemented: NDCC 14-02.4-22, 14-02.4-23